

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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: MARSH AND MCLENNAN AGENCY LLC, :
: Plaintiff, :
: : 19-CV-3837 (VSB)
: -against- :
: ELMER RICK FERGUSON, :
: Defendant. :
: :
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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/10/2019

ORDER

VERNON S. BRODERICK, United States District Judge:

Before me is a discovery dispute concerning five discovery requests contained in three subpoenas served by Plaintiff on, respectively, non-parties Triad Advisors, LLC, Resource Investment Advisors, and Teros Advisors LLC (the “Non-Parties”). On September 6, 2019, Plaintiff requested leave to serve third-party subpoenas on the Non-Parties in connection with its pending motion for a preliminary injunction against Defendant. (Doc. 69.) After a telephone conference with Plaintiff, I granted the request by order dated September 10, 2019. (Doc. 72). On September 30, 2019, the Non-Parties moved to quash or modify the subpoenas. (Doc. 80.) Plaintiff and the Non-Parties then engaged in a meet-and-confer process throughout October, and filed a letter motion detailing their disputes as to the subpoenas on October 24, 2019. (Doc. 88.) Specifically, the Non-Parties argued that (1) they should not be required to respond to Requests 2, 5, 6, 8, and 9 of each subpoena, and (2) that Plaintiff should be ordered to bear the costs and fees associated with the Non-Parties’ compliance with the subpoenas. (*Id.*) On November 7, 2019, I held a telephonic conference, at which Plaintiff and the Non-Parties expanded on their arguments made in the joint letter, and orally ruled on the parties’ disputes. Accordingly, it is

hereby:

ORDERED that the Non-Parties' objections to Requests 2, 5, 6, 8, and 9 are SUSTAINED IN PART and OVERRULED IN PART, such that they shall produce documents responsive to the following requests subject to the stated limitations:

- Request 2: The Non-Parties shall produce Defendant's employment agreement and any other documents responsive to this request to the extent that they contain communications between Defendant and the Non-Parties relating to the formation of Ferguson's employment, including documents containing an initial expression of interest and any back and forth communications between Ferguson and any of the Non-Parties concerning the possibility that they would enter into an employment agreement.
- Requests 5, 6, 8, 9: The Non-Parties shall produce documents responsive to these requests to the extent that they reflect disclosures by Defendant of MMA confidential or proprietary information that is not contained in or encompassed by documents produced in response to any other of Plaintiff's requests.
- Request 9: The Non-Parties shall produce documents responsive to this request to the extent that they reflect representations made by Defendant to the Non-Parties, clients, and/or prospective clients concerning his ability to solicit and work with MMA clients, as defined by the subpoenas issued by Plaintiff, and including representations made prior to the start of his employment and during his employment.

IT IS FURTHER ORDERED that the Non-Parties shall begin their rolling production of the subpoenaed documents next week, and shall conclude such production by November 28, 2019. Plaintiff is directed to inform the Non-Parties of any categories of documents it believes are especially urgent, and the Non-Parties are directed to make every effort to expedite their

production of such documents.

IT IS FURTHER ORDERED that I am reserving decision at this time on the Non-Parties' request for Plaintiff to pay their legal fees and costs.

IT IS FURTHER ORDERED that the Clerk of Court is respectfully directed to mail a copy of this Order to the pro se Plaintiff. The Clerk is further directed to terminate the motion at Document 80.

SO ORDERED.

Dated: November 10, 2019
New York, New York



Vernon S. Broderick
United States District Judge